Supreme Court, U.S.
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No. 01-1588

In the Supreme Court of the United States

MICHAEL TODD BROSIUS, PETITIONER

v.

WARDEN, UNITED STATES PENITENTIARY, LEWISBURG, PENNSYLVANIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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23 pages

QUESTIONS PRESENTED

1. Whether petitioner, who was convicted after court-martial proceedings, is entitled to *de novo* review of his challenges to his convictions in federal habeas corpus proceedings.

2. Whether petitioner was subjected to interrogation in violation of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), and Article 31(b) of the Uniform Code of Military Justice, 10 U.S.C. 831(b).

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	10
Conclusion	18

TABLE OF AUTHORITIES

Cases:

Allen v. *VanCantfort*, 436 F.2d 625 (1st Cir.), cert. denied, 402 U.S. 1008 (1971)	12
Burns v. *Wilson*, 346 U.S. 137 (1953)	7, 10, 11, 12, 13
Calley v. *Callaway*, 519 F.2d 184 (5th Cir. 1975), cert. denied, 425 U.S. 911 (1976)	7, 11
DeChamplain v. *Lovelace*, 516 F.2d 419 (8th Cir. 1975)	13
Edwards v. *Arizona*, 451 U.S. 477 (1981)	9, 16
Hatheway v. *Secretary of the Army*, 641 F.2d 1376 (9th Cir.), cert. denied, 454 U.S. 864 (1981)	12
Kauffmam v. *Secretary of the Air Force*, 415 F.2d 991 (D.C. Cir. 1969), cert. denied, 396 U.S. 1013 (1970)	13
Lips v. *Commandant*, 997 F.2d 808 (10th Cir. 1993), cert. denied, 510 U.S. 1091 (1994)	11
McNeil v. *Wisconsin*, 501 U.S. 171 (1991)	16
Miranda v. *Arizona*, 384 U.S. 436 (1966)	4, 15
Oregon v. *Elstad*, 470 U.S. 298 (1985)	9, 17
Sisson v. *United States*, 814 F.2d 634 (Fed. Cir. 1987), cert. denied, 484 U.S. 846 (1987)	12
Weiss v. *United States*, 510 U.S. 163 (1994)	13

Statutes:

Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, Tit. I, § 104, 110 Stat. 1218	9

Statutes—Continued: Page

Uniform Code of Military Justice, 10 U.S.C. 801 *et seq.*:
Art. 31, 10 U.S.C. 831 ..... 5, 6, 7, 9
Art. 31(b), 10 U.S.C. 831(b) 4, 14
Art. 66(c), 10 U.S.C. 866(c) 6
Art. 118, 10 U.S.C. 918 2
Art. 134, 10 U.S.C. 934 2
28 U.S.C. 1259 13
28 U.S.C. 2241 7
28 U.S.C. 2254(d) 9

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 278 F.3d 239. The opinion of the district court (Pet. App. 18a-45a) is reported at 125 F. Supp. 2d 681. The order of the Court of Military Appeals, now the Court of Appeals for the Armed Forces (Pet. App. 65a), is reported at 39 M.J. 378. The opinion of the Army Court of Military Review, now the Army Court of Criminal Appeals (Pet. App. 46a-64a), is reported at 37 M.J. 652.

JURISDICTION

The judgment of the court of appeals was entered on January 23, 2002. The petition for a writ of certiorari was filed on April 23, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following trial by a general court-martial, petitioner was convicted of unpremeditated murder, in violation of 10 U.S.C. 918 (Art. 118 of the Uniform Code of Military Justice (UCMJ)). In addition, pursuant to his plea of guilty, petitioner was convicted of communicating a threat to kill a commissioned officer, in violation of 10 U.S.C. 934 (Art. 134, UCMJ). As approved by the convening authority, his sentence included confinement for 75 years, a dishonorable discharge, forfeiture of all pay and allowances, and reduction to the lowest enlisted grade. The Army Court of Military Review and the Court of Military Appeals affirmed. Pet. App. 64a, 65a. Petitioner then filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Pennsylvania. That court denied the motion, *id.* at 45a, and the Third Circuit affirmed, *id.* at 17a.

1. a. On the early morning of June 2, 1990, two sergeants walking near the parking lot adjacent to an enlisted barracks on Giebelstadt Kaserne, in Germany, found Private First Class (PFC) Tammy Ivon, who was seriously injured as the result of numerous knife wounds. Her legs were protruding from beneath a pickup truck. One of the sergeants asked PFC Sherad, who was passing by, to assist them in rendering aid to PFC Ivon. When Sherad crawled under the vehicle, he noticed that Ivon had been bleeding extensively. As he arose, he observed an individual, whom he subsequently identified as petitioner, staring at him from an adjacent road. Ivon died of her wounds a short time later. An autopsy revealed that she had been stabbed four times in the chest, five times in the abdomen, and one time near each eye. Army Criminal Investigation

Division (CID) investigators located her automobile near where she was found. The back seat of her car was covered with blood and a portion of her underpants was on the floorboards. Pet. App. 2a, 47a-50a.

Evidence presented during a pretrial suppression hearing showed that, as the investigation developed on the day of the murder, June 2, 1990, CID investigators initially focused their attention on two suspects, PFC David Sparks, Ivon's boyfriend, and Specialist Randy Hestekin, Sparks's roommate. Hestekin had returned to the base early that morning with blood on his shirt and had instructed another soldier who observed him not to reveal what he had seen. Investigator Douglas M. Allen took Sparks to the hospital for a sexual assault determination. Pet. App. 20a.

During the late morning of June 2, petitioner awakened his roommate by screaming that Sparks had killed Ivon. Petitioner then repeated this accusation to his company First Sergeant, but he acknowledged that he had been with PFC Ivon on the night of the murder. The First Sergeant subsequently asked Agent Allen whether the investigators wished to speak with petitioner. Allen replied, "Yes, if he's in the area you can send him down." After the First Sergeant summoned petitioner to meet with Allen, petitioner informed Allen and another agent that PFC Ivon had driven him and another soldier, whom he did not wish to identify, back to the base from a local club the previous night. According to Agent Allen, petitioner then requested the presence of a lawyer, his First Sergeant, or some other third party to witness his statements. Allen responded that lawyers were available at CID Headquarters, known as "the River Building," and that petitioner should go there if he wanted to speak with a lawyer or someone else. Petitioner's section sergeant

then drove him to the River Building. Pet. App. 3a, 20a-21a, 50a.

At the River Building, Agent Mark Nash questioned petitioner without advising him of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), or under Article 31(b) of the Uniform Code of Military Justice, 10 U.S.C. 831(b).[1] Before beginning the interview, Agent Nash informed petitioner that Sparks was the main suspect and that, if petitioner was concerned about his rights or began to say anything potentially incriminating, the agents would stop questioning him and advise him of his rights. Nash added that Captain Harper Ewing, a military attorney who was the prosecutor assigned to the case, would be available to witness the interview. "When Captain Ewing arrived, [petitioner] recognized him as [the] attorney who had represented him in an earlier civil matter." Ewing made some preliminary inquiries to ascertain whether that representation would prevent him from prosecuting the case. Although Ewing told petitioner that he now was "working with the cops," petitioner voiced no objection to Ewing's presence and did not ask Ewing questions or seek his legal advice. Pet. App. 3a-4a.

Following his interviews, at approximately 10 p.m. on June 2, petitioner signed a statement acknowledging that PFC Ivon had given him and another male soldier a ride back to the base from a club and that he last saw her at approximately 2:55 a.m. that morning. He also

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[1] The obligation to provide *Miranda* warnings applies to custodial interrogations. Article 31(b) applies in broader circumstances, requiring that any person suspected of an offense and subject to the UCMJ be advised that he need not make a statement and that any statement may be used against him in a trial by court-martial. See 10 U.S.C. 831(b).

stated that Ivon had a troubled relationship with Sparks. Following the interview, petitioner returned to his unit. Before he left, the investigators took petitioner's clothing because it was the same clothing he had worn to the club the previous evening. Pet. App. 4a, 24a, 50a-51a.

According to Agent Nash, petitioner became a suspect the next morning, June 3, when CID investigators met about the case and realized that, although petitioner had stated that there were three persons in Ivon's car when it returned to the base in the early morning of June 2, the gate guard logs reflected that only two persons were in the vehicle. Nash testified in the suppression hearing that he knew of the discrepancy when he interviewed petitioner on June 2 but assumed that the gate guard had made a mistake. Since then, other evidence had come to light that implicated petitioner, and Hestekin's alibis had been verified. Pet. App. 24a-25a.

Petitioner returned for further questioning on June 4 and 5. On both days, he was advised of his rights under *Miranda* and Article 31, UCMJ, 10 U.S.C. 831, but waived his rights and agreed to answer questions. On June 4, petitioner reiterated his earlier version of events. On the following day, however, he admitted that he had killed PFC Ivon and retracted his earlier statement that there was a third person in her car when they returned to the base. Petitioner stated that he had sexual intercourse with Ivon in the back seat of her car upon returning to the base but attempted to stop because she was "like a sister" to him. He further stated that, when Ivon failed to terminate their encounter, he stabbed her approximately nine times in the chest and stomach and also stabbed her across the eyes

so she would stop looking at him. Pet. App. 4a-5a, 51a-52a.

b. Before trial, petitioner moved to suppress his statements to the investigators. He argued that the statements made on June 2 were inadmissible because they were not preceded by warnings under *Miranda* and Article 31, UCMJ, and were taken after he had requested the presence of counsel, and that the statements made on June 4 and 5 were tainted by the denial of his rights on June 2.

The military judge denied the motion. The judge found that petitioner was not entitled to warnings under Article 31, UCMJ, because the interviewing agents neither believed nor reasonably should have believed that petitioner was a suspect when he was interviewed on June 2. The judge also determined that petitioner's request for a lawyer was not for the purpose of obtaining legal representation or advice but was a request for an impartial observer. The judge made a factual finding that petitioner understood that Captain Ewing was not his lawyer, rejecting petitioner's contention that he was led to believe that Captain Ewing was his attorney. Pet. App. 27a-29a.

2. a. The Army Court of Military Review, which is authorized to make findings of fact as well as rulings of law, see 10 U.S.C. 866(c), affirmed petitioner's convictions. Pet. App. 46a-64a. The court rejected petitioner's argument that his statements on June 2 were taken in violation of his rights, finding that he "was neither in custody nor reasonably suspected of killing PFC Ivon by the CID agents with whom he spoke on that date." *Id.* at 59a. The court determined that petitioner had voluntarily made the statements in order to assist the investigation, and that his nervous demeanor was understandable because he was a friend of the

victim and thus would have raised no suspicions in a reasonable investigator. *Id.* at 59a-60a. The court added that, even if petitioner had been in custody, his request for counsel was not unequivocal. *Id.* at 60.

b. The Court of Military Appeals affirmed without issuing an opinion. Pet. App. 65a.

3. Petitioner subsequently filed a petition for habeas relief under 28 U.S.C. 2241. Addressing the standard of review, the district court observed that, under *Burns* v. *Wilson*, 346 U.S. 137 (1953), "a civilian court may only review decisions of military courts to determine if the latter gave the petitioner's claims full and fair consideration." Pet. App. 31a. Noting that the test had been "channeled somewhat" by a four-factor analysis adopted in *Calley* v. *Callaway*, 519 F.2d 184 (5th Cir. 1975) (en banc), cert. denied, 425 U.S. 911 (1976), the district court stated that it would "not disturb the military courts' underlying findings of narrative or historical facts" but would "review certain mixed questions of law and fact, such as whether petitioner was in custody." Pet. App. 33a.

The court first rejected petitioner's claim that he was a suspect when questioned on June 2 and therefore was entitled to warnings under Article 31, UCMJ. The court explained that Agent Allen was not yet aware of the discrepancy between petitioner's statement and the gate guard's logs on whether a third person accompanied petitioner and PFC Ivon back to the base, and that Agent Nash believed the gate guard had made a mistake. Also, the court observed, two valid suspects were already in custody, and Allen met petitioner while interviewing a number of soldiers. At that time, Allen anticipated that petitioner would supply incriminating evidence against Sparks. As for petitioner's reliance on the seizure of his clothing at the end of the interview,

the court determined that the argument had been given full and fair consideration by the Court of Military Appeals and did not alone constitute a basis for disturbing the conviction. Pet. App. 36a-37a.

The district court also rejected petitioner's contention that he was "in custody" for *Miranda* purposes when questioned on June 2. The court noted that petitioner was cooperative with the investigators at all times and never asked to leave. Moreover, the court observed, the Army Court of Military Review had made a factual finding that petitioner appeared before the agents voluntarily as a friend of PFC Ivon to assist in apprehending her killer. Pet. App. 40a-41a.

Finally, the court rejected petitioner's claim that he was denied his right to counsel in violation of *Miranda*. The court found that petitioner's initial request for counsel was ambiguous, and explained that petitioner was not entitled to *Miranda* warnings in any event because he was not in custody when he requested counsel. Pet. App. 42a-43a.

4. The court of appeals affirmed. Pet. App. 1a-17a. The court observed that, in *Burns*, this Court "applied a deferential standard of review to the claims that, on the undisputed facts, the habeas petitioners' constitutional rights were violated." *Id.* at 8a. Without attempting a complete elucidation of *Burns*, the court concluded that, "at least absent a challenge to the constitutionality of the statute under which the defendant was convicted, * * * our inquiry in a military habeas case may not go further than our inquiry in a state habeas case." *Id.* at 9a. Thus, the court assumed, "but solely for the sake of argument," that it could "review determinations made by the military courts in this case as if they were determinations made by state courts." *Ibid.* (emphasis omitted). Applying that

assumption, the court looked to the habeas standards set forth in 28 U.S.C. 2254(d), which, pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, Tit. I, § 104, 110 Stat. 1218-1219, condition habeas relief on a showing that the prior adjudication of the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented."

The court first addressed petitioner's claim that he should have been given *Miranda* warnings when interviewed on June 2. After reviewing petitioner's testimony and the testimony of the agents in the suppression hearing, the court found "no basis for overturning the Army Court of Military Review's determination that [petitioner] appeared before the CID agents voluntarily." Pet. App. 11a. As a result, the court determined, petitioner was not in custody when he gave his statements on June 2.

The court next addressed petitioner's claim that he was a suspect on June 2 and so was entitled to warnings under Article 31, UCMJ. The court found it unnecessary to determine whether petitioner was a suspect, concluding that any failure to suppress petitioner's statements on June 2 was harmless error because those statements added nothing to the statements he subsequently gave on June 4 and 5. Under *Oregon* v. *Elstad*, 470 U.S. 298 (1985), the court explained, the subsequent confessions were admissible because they were preceded by *Miranda* warnings, which "suffice[d] to remove the conditions that precluded admission of the earlier statement." Pet. App. 16a (quoting *Elstad*, 470 U.S. at 314).

Finally, the court rejected petitioner's contention that, under *Edwards* v. *Arizona*, 451 U.S. 477 (1981), the investigators should have suspended their questioning when petitioner requested counsel. The court explained that petitioner could not rely on *Edwards* because he was not in custody when he requested counsel. Pet. App. 17a.

ARGUMENT

Petitioner contends (Pet. 10-19) that the courts of appeals disagree on the standard of review that governs habeas claims arising out of court-martial proceedings. According to petitioner, the court below should have followed other courts of appeals by applying a *de novo* standard of review to his claims. That contention lacks merit and does not warrant review.

1. In *Burns* v. *Wilson*, 346 U.S. 137 (1953), this Court addressed the scope of federal habeas review of military court-martial proceedings. Four Justices stated in a plurality opinion that,

> "[i]n military habeas corpus cases, even more than in state habeas corpus cases, it would be in disregard of the statutory scheme if the federal civil courts failed to take account of the prior proceedings —of the fair determinations of the military tribunals after all military remedies have been exhausted."

Id. at 142. Accordingly, the plurality explained, "when a military decision has dealt fully and fairly with an allegation raised in [an] application [for habeas corpus], it is not open to a federal civil court to grant the writ simply to re-evaluate the evidence." *Ibid.* Instead, it "is the limited function of the civil courts to determine whether the military have given fair consideration to each of these claims." *Id.* at 144. The petitioners

therefore could not attempt "to prove *de novo* * * * precisely the case which they failed to prove in the military courts." *Id.* at 146. Justice Minton concurred in the judgment because, in his view, the proper role of a federal habeas court in reviewing a court-martial conviction was limited to determining whether the court-martial possessed jurisdiction. *Id.* at 147.

While *Burns* has not produced a completely clear standard, see Pet. App. 7a-8a, there is no conflict over the application of *Burns* that warrants this Court's review in this case. As the court of appeals observed (*id.* at 7a), habeas review of court-martial convictions is most often conducted by the Tenth Circuit because the United States Disciplinary Barracks is located in Fort Leavenworth, Kansas. That court reads *Burns* to permit habeas review of a military conviction only if, *inter alia*, the claim involves a substantial constitutional question and raises an issue of law rather than fact, and the "military courts failed to give adequate consideration to the issues involved or failed to apply proper legal standards." *Lips* v. *Commandant*, 997 F.2d 808, 811 (10th Cir. 1993), cert. denied, 510 U.S. 1091 (1994); see *Calley* v. *Callaway*, 519 F.2d 184, 199-203 (5th Cir. 1975) (en banc) (adopting same standards), cert. denied, 425 U.S. 911 (1976). Petitioner could not prevail under that approach, because he does not argue that the military courts "failed to apply proper legal standards" or "failed to give adequate consideration" to his claims. Instead, he seeks *de novo* review of the military courts' application of settled legal standards to the facts of this case. Pet. 17-18. Accordingly, the district court properly determined that petitioner was not entitled to relief under the Tenth Circuit's approach. Pet. App. 32a-33a.

Petitioner asserts (Pet. 11-12) that three courts of appeals have adopted a *de novo* standard when addressing habeas challenges to court-martial convictions. The decisions of two of the three courts of appeals did not involve a habeas petition, however, but instead arose in the context of civil proceedings seeking back pay, reinstatement, and other comparable relief from sentences imposed by courts-martial. See *Hatheway* v. *Secretary of the Army*, 641 F.2d 1376 (9th Cir.) (federal question and mandamus claim seeking back pay, honorable discharge, and lost benefits), cert. denied, 454 U.S. 864 (1981); *Sisson* v. *United States*, 814 F.2d 634 (Fed. Cir.) (Tucker Act claim seeking repayment of forfeited compensation), cert. denied, 484 U.S. 846 (1987). Neither decision purports to adopt or has been construed by those courts as establishing a *de novo* standard for habeas actions.[2]

The third decision relied on by petitioner, *Allen* v. *VanCantfort*, 436 F.2d 625 (1st Cir.), cert. denied, 402 U.S. 1008 (1971), held that, "[w]ith respect to constitutional issues, the scope of review in habeas corpus challenges to military convictions is more limited than in comparable civilian cases." *Id.* at 629. The court's subsequent observation that it would "review briefly petitioner's claims on the merits," *id.* at 630, does not establish precedent for a *de novo* standard, and should not be so interpreted in light of *Burns*' rejection of such a standard for review of claims, similar to those here, that confessions had been coerced. 346 U.S. at 145-146

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[2] In *Hatheway*, the court could not assess whether the "constitutional arguments received full and fair consideration" in the military courts "because none of the military courts articulated its analysis of them." 641 F.2d at 1380 n.4.

(plurality opinion); *id.* at 147 (Minton, J., concurring). See also Pet. App. 8a.

Petitioner also observes (Pet. 10-11, 13) that, while two courts of appeals apply the same standards of review to habeas challenges to court-martial proceedings and habeas challenges to state court proceedings, those courts, unlike the court below, have not applied post-AEDPA habeas standards in the military context. See Pet. 10 (citing *DeChamplain* v. *Lovelace*, 510 F.2d 419 (8th Cir. 1975), and *Kauffman* v. *Secretary of the Air Force*, 415 F.2d 991 (D.C. Cir. 1969), cert. denied, 396 U.S. 1013 (1970)). There is no conflict on the question, however, because those cases were decided before enactment of the AEDPA, and those courts have not considered the issue since the AEDPA's enactment. Moreover, the court of appeals here did not definitively decide that the AEDPA standards apply to habeas review of military convictions, but simply held that no more favorable standards should apply in that context than the standards that apply to habeas review of state court convictions. Pet. App. 9a. Petitioner offers no convincing basis for concluding that habeas review of court-martial convictions should be less deferential than habeas review of state court convictions, and he therefore provides no theory under which he might be entitled to more favorable collateral review than he received in this case.[3]

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[3] Petitioner suggests (Pet. 17-19) that *de novo* review is appropriate because civilian courts are competent to protect military members' legal rights. But petitioner overlooks that military defendants have recourse to the Court of Appeals for the Armed Forces, whose judges are civilians, see *Weiss* v. *United States*, 510 U.S. 163, 169 (1994), with certiorari review available in this Court, 28 U.S.C. 1259. After the completion of that review, finality considerations that are fundamental to habeas review argue strongly

2. In any event, even if, as petitioner maintains (Pet. 17-19), a *de novo* standard of review should be applied to his claims, petitioner still would not be entitled to relief.

a. Petitioner contends (Pet. 21-24) that he was "suspected of an offense" under Article 31(b), UCMJ, when questioned on June 2, and therefore should have been advised of his right to remain silent. 10 U.S.C. 831(b). He asserts that, while the district court emphasized the subjective belief of the investigators that petitioner was not a suspect, their subjective belief was not objectively reasonable. That fact-bound contention lacks merit.

The military judge found that neither of the agents who questioned petitioner "believed, *nor reasonably believed, nor should they have reasonably believed* that [petitioner] was a suspect on 2 June 1990," and that "no ground existed for them to believe that the accused was a suspect." Pet. App. 28a (emphasis added). The Army Court of Military Review likewise found that petitioner was not "*reasonably* suspected of killing PFC Ivon by the CID agents with whom he spoke on [June 2]." *Id.* at 59a (emphasis added). And the district court, after determining that the military judge's findings "support an honest belief on the part of the investigators that [petitioner] was not a suspect," added that "there was objective evidence in the record to support the agents' personal belief." *Id.* at 37a. Both the military courts and the district court thus concluded that the investigators' belief that petitioner was not a suspect was objectively reasonable in view of the available evidence.

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against applying a *de novo* standard, particularly in the military setting.

There is ample support for that conclusion in the record. By the time the agents interviewed petitioner, both Hestekin and Sparks had been taken into custody and had been identified as the principal suspects. Pet. App. 37a. The agents believed that petitioner had approached them voluntarily to assist them in the investigation. *Id.* at 59a. They also assumed that petitioner would supply incriminating evidence against Sparks, and petitioner did so by describing Sparks's troubled relationship with Ivon. *Id.* at 3a, 37a. While petitioner might have appeared nervous or agitated, his condition was reasonably attributable to the fact that his friend had been murdered. *Id.* at 37a. And although petitioner's statement that a third person had been in Ivon's car was not consistent with the gate entry log, the discrepancy was unknown to one of the agents and the other agent assumed that the gate entry log was in error. *Ibid.* The record indicates that additional evidence implicating petitioner had been uncovered by the time he became a suspect, and Hestekin's alibis had been verified. *Id.* at 24a-25a.[4]

b. Petitioner also contends (Pet. 25-28) that he was in custody on June 2 and thus was entitled to be advised of his rights pursuant to *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Petitioner bases his argument on the assertion that he was ordered by the First Sergeant to meet with the investigators and was later escorted under

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[4] Petitioner relies (Pet. 22) on the fact that the agents took his clothing at the termination of the June 2 interview. As the district court found, however, that argument alone does not warrant granting habeas relief. Pet. App. 37a. Also, petitioner did not raise the argument in either of the military courts with factfinding authority, but instead raised it for the first time in the Court of Military Appeals.

guard to the River Building for further questioning. That fact-bound claim is without merit.

As the court of appeals correctly determined after reviewing the testimony in the suppression hearing, there is no basis for overturning the finding of the Army Court of Military Review that petitioner appeared before the agents voluntarily. Pet. App. 11a-13a. Although the First Sergeant had directed petitioner to meet with the agents after asking them whether they would like to see him, that happened only because petitioner had stated that he was with PFC Ivon before her murder and wished to inform the agents about it. *Id.* at 11a-12a. As for petitioner's suggestion that he was in custody because he was escorted to the River Building, petitioner simply was provided transportation to the River Building after he voluntarily decided to go there to continue his interview. *Id.* at 13a-14a. In fact, petitioner "himself does not appear to have testified that he felt compelled to go to the River Building." *Id.* at 14a.

c. Finally, petitioner claims (Pet. 19-21) that the investigators violated his rights under *Miranda* by continuing to question him after he requested counsel. As the court of appeals explained (Pet. App. 17a), however, the obligation to cease questioning on a request for counsel only arises if the subject is in custody. See, *e.g.*, *McNeil* v. *Wisconsin*, 501 U.S. 171, 178 (1991) (*Miranda* "requires * * * some statement that can reasonably be construed to be an expression of desire for the assistance of an attorney in *dealing with custodial interrogation.*"); *Edwards* v. *Arizona*, 451 U.S. 477, 482 (1981) ("*Miranda* * * * declared that an accused has a Fifth * * * Amendment right to have counsel present during custodial interrogation.").

Petitioner, as explained above, was not in custody when questioned on June 2.

d. For the reasons explained by the court of appeals (Pet. App. 14a-16a), any error concerning the admissibility of petitioner's statements on June 2 was harmless. Petitioner's statements simply acknowledged that PFC Ivon drove him and another soldier back to the base early that morning, and that he had last seen her at about 2:55 a.m. Those statements were no different from statements he made to other witnesses who testified at trial. *Id.* at 15a. On June 4 and 5, after being advised of his rights and waiving them, petitioner acknowledged that there was no third person in Ivon's car and admitted that he had stabbed Ivon to death while having sexual relations with her. *Id.* at 4a-5a.

Any violation of petitioner's rights in connection with his statements on June 2 would not affect the admissibility of the subsequent confessions. As this Court has explained,

> "absent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a subject has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement."

Oregon v. *Elstad*, 470 U.S. 298, 314 (1985).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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